

REMARKS

I. Introduction

Claims 36-48 and 51-86 are pending and stand rejected. Claims 36, 64, 72-75, and 77 have been amended. Applicants herewith cancel claims 65 and 68-71. With the entry of this amendment, claims 36-48, 51-64, 67, 72-75, and 77-85 will be pending and active.

II. Rejections under 35 U.S.C. § 112

Claim 69 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

According to the Examiner, it is unclear how claim 69 further limits claim 64 because the range of claim 64 does not include 1.062 g/ml. In response, applicants herewith cancel claim 69.

The Examiner rejects claims 36-48, 51-63, 71-75 and 77-85 under 35 U.S.C. 112, first paragraph, for the alleged reason that the specification, while being enabling for a centrifugation vessel comprising a porous barrier, filter sieve or the flap as described in Figure 3 of the instant invention, does not reasonably provide enablement for a centrifuge vessel comprising any other type of "flap". According to the Examiner, the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the centrifuge vessel of the invention commensurate in scope with these claims is maintained for reasons of record.

The Examiner recommends an amendment of the claims to specify that the flap is a disk which is a disk, wherein said disk is bent by centrifugation on two sides across a transverse strut (page 28, lines 24-26). In response, Applicants have amended claims 36, 64 and 77, pursuant to this suggestion. Withdrawal of these rejections is respectfully requested.

III. Rejections under 35 U.S.C. § 102

The Examiner rejects Claims 64, 65, 67 under 35 U.S.C. 102(b) as being anticipated by Suda et al (U.S. 4,391,802).

Suda et al. is said to disclose a cell separation medium and centrifugation vessel, wherein said medium has a density of 1.059, (column 3, line 7).

The Examiner did not find Applicants previous arguments to be persuasive. The Examiner states that rejected claims are drawn to a kit comprising a cell separation medium rather than a method of separating tumor cell from bodily fluid. In response, Applicants have amended claim 64 to clarify the invention, and thereby address the Examiner's objection. In view of this amendment, Applicants respectfully request withdrawal of this rejection.

The Examiner also rejects claims 64, 65, 67 and 70 under 35 U.S.C. 102(b) as being anticipated by Van Vlasselaer et al (U.S. 5,474,687).

According to the Examiner, Van Vlasselaer et al disclose a Percoll cell separation medium having a density of 1.0605, plus or minus 0.00005 g/ml, in the bottom of a cell-trap tube with body fluid in the upper portion of said tube (column 13, lines 32-52). Applicants respectfully submit that Applicants' amendments to the rejected claims clearly distinguish the invention over Van Vlasselaer. Accordingly, Applicants request the Examiner to withdraw this rejection.

IV. Double Patenting Rejection

Claims 36-38 and 51-55 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27, 28, 29, 30, 31, 48 and 49 of U.S. Patent No. 6, 821, 726 in view of Van Vlasselaer et al (U.S. 5,474,687). .

Applicants traverse this rejection but will file a terminal disclaimer to accelerate allowance upon an indication of allowable subject matter.

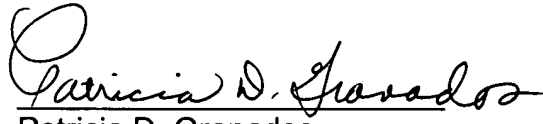
CONCLUSION

In light of the above amendments and comments, Applicants respectfully request that all rejections and objections be withdrawn and that a timely indication of allowability be forthcoming. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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